

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
FCC Seeks Comment Regarding Possible Revision)	CB Docket No. BO 16-251
or Elimination of Rules Under The Regulatory)	
Flexibility Act, 5 U.S.C. Section 610)	
)	

To: The Commission

Comments of
Lotus Communications Corp.

Lotus Communications Corp., a California corporation ("**Lotus**") and the sole shareholder of the licensees of digital LPTV stations KHLN-LD ("**KHLN**"), Channel 43, Houston, Texas, Facility ID No. 57189, and KPHE-LD ("**KPHE**"), Channel 16, Phoenix, Arizona, Facility ID No. 186602 (formerly Facility ID No. 30885), respectfully submits these comments in the above-captioned proceeding, with respect to the Commission's review of the rule in 47 C.F.R. Section 74.785 (the "**LPTV Rule**") to determine whether the LPTV Rule should be continued without change, or should be amended or rescinded.¹ The LPTV Rule provides the general requirements for the pilot program (the "**LPTV Pilot Program**") Congress mandated in the LPTV Pilot Project Digital Data Services Act (the "**DDSA**").² Both KHLN and KPHE are among the 12 stations the DDSA identifies as eligible participants in the LPTV Pilot Program, and Lotus intends to exercise the eligibility rights associated with these stations in the post-Incentive Auction and TV-Repack era. The increasing demand for digital data services, the small size of the LPTV Pilot Program and the negligible burden the LPTV

¹ See *FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under The Regulatory Flexibility Act, 5 U.S.C. 610*, public notice, DA 16-792 ("**PN**") (2016).

² 47 U.S.C. § 336(h)

Rule imposes on the Commission, all argue in favor of maintaining this LPTV Rule in its current form. Further, Section 610's five-factor analysis, discussed below, supports this conclusion.³

Background

The DDSA established the 12-Station LPTV Pilot Program to demonstrate the feasibility of using low-power television stations to provide digital data services to unserved areas.⁴ The DDSA includes digitally based interactive broadcast service and wireless internet access as permissible digital data services and allows for such services on a one-way or two-way basis on the LPTV channel. The DDSA also allows delivery of LPTV digital data services via multiple transmitters at multiple locations.

The Commission released an Order implementing the provisions of the LPTV Pilot Program in April 2001.⁵ Those provisions were revised in some respects on reconsideration in February 2002.⁶ Lotus acquired KHLN and KPHE in 2004. During this time, the Commission was transitioning full-service television stations from analog to digital and as a result, many LPTV and TV translator stations were displaced. Although Lotus was learning about the emerging technologies that its stations might employ to provide digital data services, it was not possible to implement such services during the digital television transition due to the high risk of displacement. Towards the end of the digital television transition, the threat of displacement was reduced and in 2009 both KHLN and KPHE were transitioned early to digital-only operation. KPHE elected to make its digital companion channel the primary channel, hence its facility ID number was changed for 30885 to 186602, and KHLN was flash-cut on its analog

³ 5 U.S.C. Section 610.

⁴ The DDSA also directs the Commission to select a station and repeaters to provide service to communities in the Kenai Peninsula Borough and Matanuska Susitna Borough in Alaska.

⁵ *Implementation of LPTV Digital Data Services Pilot Project*, FCC 01-137, Order, 16 FCC Rcd 9734 (2001).

⁶ *Implementation of LPTV Digital Data Services Pilot Project*, FCC 02-40, Order on Reconsideration, 17 FCC Rcd 2988 (2002).

channel. The threat of displacement was quickly renewed in 2010 with the announcement of the Incentive Auction and TV-Repack.⁷ Lotus is presently looking at various options for implementing a digital data service in the post Incentive Auction and TV Repack era, including sharing a channel with a primary status station in such a way that a standard definition stream for the primary station would be maintained and thus the concern over future displacement eliminated.⁸

Analysis

The Commission will use the Section 610 five-factor analysis to determine whether the LPTV Rule should be continued without change, or should be amended or rescinded. For the reasons summarized below, Lotus believes that this analysis favors continuing the LPTV Rule without change.

1. The continued need for the rule. The LPTV Rule needs to be continued for those eligible stations that wish to implement the provisions in the DDSA. Further, the original purpose of the LPTV Pilot Program, demonstrating the feasibility of using low-power television stations to provide digital data services to unserved areas, is still relevant.

2. The nature of complaints or comments received concerning the rule from the public. Lotus is unaware of any such complaints or comments.

3. The complexity of the rule. The requirements for implementing the provisions in the DDSA adopted on reconsideration are not overly complex.

4. The extent to which the rule overlaps, duplicates or conflicts with other federal rules, including rules associated with state and local governments. The LPTV Rule provides the

⁷ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket 12-268, Report and Order, 29 FCC Rcd. 6567 (2014).

⁸ *Channel Sharing by Stations Outside the Broadcast Television Spectrum Incentive Auction Context*, MB Docket No. 15-137, Report and Order, 32 FCC Rcd 2637(2017). "An LPTV or TV translator that shares a full power or Class A station's channel will obtain "quasi" primary interference protection for duration of the channel sharing arrangement by virtue of the fact that the full power or Class A station is a primary licensee."

general requirements for the LPTV Pilot Program mandated by Congress in the DDSA and does not overlap, duplicate or conflict with other federal or local governmental rules.

5. The length of time since the rule has been evaluated to the degree to which technology, economic conditions or other factors have changed in the area affected by the rule.

All areas affected by the LPTV Rule have improved such that it is more relevant today than when it was originally adopted. For example, there have been significant technological advancements in both fixed and portable devices. Moreover, the recently adopted rules for channel sharing now allow LPTV stations to share a full-service or Class A station's channel, effectively eliminating the risk of displacement for the duration of the channel sharing arrangement as a result of the primary status associated with the full-service or Class A station licensee.

Recommendation and Conclusion

As a practical matter, the LPTV Pilot Program remains relevant and is still needed to achieve Congress' original goal, to demonstrate the feasibility of using low-power television stations to provide digital data services to unserved areas. For all the reasons stated above, Lotus respectfully request that the LPTV Rule be continued without change.

Respectfully submitted,

Lotus Communications Corp.



Howard A. Kalmenson
President
May 3, 2017